Supreme Court, U.S
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No. 10-604

In the Supreme Court of the United States

VICTOR MOSELEY and CATHY MOSELEY
d/b/a VICTOR'S SECRET, VICTOR'S LITTLE SECRET,
Petitioners,

v.

V SECRET CATALOGUE, INC.,
VICTORIA'S SECRET STORES, INC.,
and VICTORIA'S SECRET CATALOGUE, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR REHEARING

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February 10, 2011

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Judicial Code of Ethics and Conduct for Federal Judges, http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf 5-8

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PETITION FOR REHEARING

Introduction

Due to the extraordinary posture and history of this case, the Petitioner, a Pro Se litigant, with his overwhelming belief that this case has been manipulated, would be lax in his responsibility as a United States citizen if he did not petition this court for rehearing.

Petitioner, being mindful of Sup. Ct. R. 44(2) does not submit this motion for the purpose of delay, but in hopes that this Court, having heard this case once and ruling in favor of Petitioner, will reconsider and take the opportunity to clarify the language of the TDRA (Trademark Dilution Revision Act) and correct the injustices perpetrated on the Petitioner by the lower courts. The following is presented in good faith and was not previously presented in Petitioners writ (docket 10-604).

United States Patent and Trademark Office Request For Comments: Trademark Litigation Tactics

The Trademark Technical and Conforming Amendment Act of 2010 became effective on March 17, 2010. Pub. L. No. 111-146, 124 Stat. 66 (2010). The Act includes a provision that the Secretary of Commerce, in consultation with the Intellectual Property Enforcement Coordinator, shall conduct a study and report to the Committees on the Judiciary of the House and Senate on "(1) the extent to which small businesses may be harmed by litigation tactics by corporations attempting to enforce trademark rights

beyond a reasonable interpretation of the scope of the rights granted to the trademark owner; and (2) the best use of Federal Government services to protect trademarks and prevent counterfeiting." Trademark Technical and Conforming Amendment Act § 4. The study and report shall also include any policy recommendations deemed appropriate.

In connection with the study, the USPTO is requesting feedback from U.S. trademark owners, practitioners, and others regarding their experiences with litigation tactics, especially those involving an attempt to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner. The USPTO also is eliciting suggestions to address any allegedly problematic litigation tactics. Questions nine, ten, and eleven, are of importance to this Court.

9. Do you think the U.S. courts have a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should the U.S. courts do?

10. What other U.S. agencies may have a responsibility to do something about the problem?

11. Do you think Congress has a responsibility to do something to discourage or prevent aggressive trademark litigation tactics? If yes, what should Congress do?

Scott Smith owner of BizStarz who's company was called "EntrepreneurPR" until he got caught in the cross hairs of Entrepreneur Media, Inc filed this

response to the U.S.P.T.O. http://dl.dropbox.com/u/1727856/Request_for_Comments_Scott_Smith.pdf.

Attorney Ronald D. Coleman of New York-based Goetz Fitzpatrick LLP seems to understand the unsurmountable barriers that small business face and believes that:

> "trademark law practice has...descended to an anti-competitive methodology utilized by dominant market players not to prevent consumer confusion, as was its original rationale, but to reduce consumer choice and overall welfare by preventing competition...The civil litigation system was not designed for the use of large companies to put small enterprises out of business, but it is perfectly suited for doing so....Congress must level the playing field..."

(Source: Federalist Society for Law and Public Policy Studies, September 2010. His essay can be found at the following link http://www.fed-soc.org/doclib/20100910_ ColemanEngage11.2.pdf.

Daniel R. Castro has filed suit against Entrepreneur Media, Inc. in the United States District Court for The Western District of Texas Austin Division with the following claims which are published at the following link : http://dl.dropbox.com/u/1727856/Castro_v_EMI_1st_Amended.pdf.

The point is that small businesses across the United States are being harmed by these litigations. The Courts, by misinterpretation of the TDRA are in effect granting famous names property rights in gross,

unlimited in time, to common words of the English language. **Words like entrepreneur and secret!** This goes way beyond traditional trademark protection and is not supported by the language of the TDRA. The courts, like this court, are not affording small business equal protection under the law. After the decision of this court on March 4, 2003 the district court should have judicially estopped Respondents from pursuing the same claim, which was settled by this court's decision.

Big business use their vast resources to influence politicians, who in turn influence the courts. The courts (albeit not all) but as in this case after this Court's ruling in *Moseley v. V Secret Catalog, Inc.*, 537 U.S. 418 (2003) where the Sixth Circuit Court of Appeals, being in a position to be fully aware of the goings on of Congress illegally held this case in excess of four years, obstructing justice, until the TDRA was passed, simply to garner a favorable outcome for Respondents. Further, on the way back up the appellate ladder, the Circuit Court delivered a totally erroneous opinion that the TDRA formed a rebuttable presumption, because the Court had absolutely no evidence (which the TDRA requires) that Petitioners name would harm Respondents mark. Petitioner understands that this court has discretion in which cases it hears, and the case must meet certain criteria.

This Case Is Of National Importance And It Meets And Exceeds All Of The Criteria For This Court's Review.

The decision of the circuit court splits from two or more circuits. The decision is totally erroneous as there is no language in the TDRA to support a

rebuttable presumption theory. There is absolutely no evidence that Petitioners name would harm Respondents' famous mark. **Therefore, what could have Petitioners rebutted?** It sets a double standard for those that sell adult related products as to those that do not.

It is irrefutable that the circuit court held this case in excess of four years, violating Petitioners fifth and fourteenth amendment constitutional rights to due process. The district judge called opposing counsel into a private conference. The Circuit judge interjected into this case the totally erroneous statement, that Petitioner had never heard of Respondents' famous mark, hurting Petitioner's credibility. The statement that Congress convened to overrule this case is echoed across the country, more than suggesting political and judicial manipulation of this case.

The District and Circuit Courts Have Abused Their Judicial Discretion By Violating The Code of Conduct for United States Judges.

The lower courts have violated canons one, two, and three of the judicial code of ethics and conduct for federal judges. The following can be found at http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf.

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

Although judges should be independent, **they must comply with the law** and should comply with this Code.

Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, **including the discharge of the judge's adjudicative and administrative responsibilities.** The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Outside Influence. A judge should not allow family, social, **political,** financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Canon 3. A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

1. **A judge should dispose promptly of the business of the court**

2. **A judge should hear and decide matters assigned**

3. **Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers.**

4. Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court personnel, litigants, and their lawyers cooperate with the judge to that end.

Administrative Responsibilities.

A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.

Compliance with the Code of Conduct

Anyone who is an officer of the federal judicial system authorized to perform judicial functions

is a judge for the purpose of this Code. All judges should comply with this Code

All claims of judicial misconduct are verifiable in the very record of this case.

Conclusion

In the interest of fair and equal justice and for all the reasons listed above, this court should reconsider and grant Petitioner's petition (10-604), reverse the decision of the Sixth Circuit Court of Appeals, grant summary judgement and enter an order of final judgment in favor of the Petitioner.

Respectfully Submitted,

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CERTIFICATION

The foregoing is restricted to the grounds specified in 44.2 S. Ct. R. and it is presented in good faith and not for delay.

Victor Moseley - sem

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